

PT 01-19

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FIRST PRESBYTERIAN CHURCH)		
)		
Applicant)	A.H. Docket #	99-PT-0067
)	Docket #	98-100-76
v.)	Parcel Index #	02-19-453-001
)		02-19-453-002
THE DEPARTMENT OF REVENUE)		02-19-453-003
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David R. Reid, attorney at law, appeared on behalf of the First Presbyterian Church.

Synopsis:

The hearing in this matter was held on August 21, 2000, at 2309 West Main Street, Marion, Illinois, to determine whether or not Williamson County Parcel Index Nos. 02-19-453-001, 02-19-453-002, and 02-19-453-003 qualified for exemption from real estate taxation for all or part of the 1998-assessment year.

Dr. Roger Hendricks, a member of the session and chairman of the facilities planning board of the First Presbyterian Church (hereinafter referred to as the "Applicant"), Mrs. Pamela K. Hendricks, a member of the board of deacons of the applicant, Rev. Steven M. McKeown, pastor of the Christian Life Center (hereinafter referred to as the "CLC"), Mr. Bill Jack, 1998 chairman of the trustee board of the applicant, Mr. Norman Thomas, clerk of the session of the

applicant, and Mr. Wayne Oestmann, 2000 chairman of the trustee board of the applicant were present and testified on behalf of the applicant.

On January 1, 1998, the sanctuary building of the applicant was located at 421 N. Fourteenth Street in Herrin, Illinois. Behind this sanctuary building and across the alley from it were located the Bob Stotlar Lumber Yard, Inc. showroom and two adjacent lumber sheds. The address of the lumberyard showroom building was 420 N. Park Avenue. On February 7, 1998, the applicant purchased the three parcels here in issue for \$110,000.00. These three parcels were improved with the Bob Stotlar showroom and the adjacent lumber sheds. The applicant purchased these lots at an auction conducted on behalf of the trustee in bankruptcy of the Bob Stotlar Lumber Yard, Inc. On February 24, 1998, the trustee in bankruptcy of the lumberyard conveyed the three parcels here in issue and the improvements thereon to the applicant.

The issues in this matter include: first, whether the applicant and CLC are religious organizations; secondly, whether the applicant owned these three parcels during all or part of the 1998-assessment year; and finally, whether the applicant was in the process of adapting these three parcels for religious or charitable use during the 1998-assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant and CLC are religious organizations. It is further determined that the applicant owned these parcels during the period February 24, 1998, through December 31, 1998. It is also determined that the applicant used and was in the process of adapting Williamson County parcel Index Nos. 02-19-453-001 and part of 02-19-453-002 and the showroom building thereon for religious or charitable purposes during the period February 24, 1998, through December 31, 1998. Finally, it is determined that the remainder of Williamson County Parcel Index No. 02-19-453-002 and also Parcel Index No. 02-19-453-003 and the lumber sheds located thereon were vacant and not used during the 1998-assessment year.

It is therefore recommended that Williamson County Parcel Index No. 02-19-453-001 and the portion of Parcel Index No. 02-19-453-002 on which the Bob Stotlar showroom is

located and also said showroom be exempt from real estate taxation for 85% of the 1998-assessment year.

It is further recommended that the remainder of Williamson County Parcel Index No. 02-19-453-002 and also Parcel Index No. 02-19-453-003 and the lumber sheds located thereon remain on the tax rolls for the 1998-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that the parcels here in issue did not qualify for exemption for the 1998-assessment year because they were not in exempt use, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. The applicant was incorporated pursuant to the Religious Corporation Act of 1872, by an affidavit dated November 15, 1973, and recorded November 21, 1973. The applicant is exempt from the Illinois Retailers’ Occupation Tax and related laws as a religious organization. (Dept. Ex. No. 2, Appl. Ex. No. 2)

3. CLC was incorporated using the name The Christian Bookshelf Fellowship pursuant to the “General Not For Profit Corporation Act” of Illinois, on March 24, 1976, for purposes that included the following:

To promote the Kingdom of God on earth through evangelism, ministering, teaching, and studying the Word of God in the Holy Bible; to assist members of the Body of Christ in their worldly struggle for existance until the promised return of Jesus Christ; (Appl. Ex. No. 22)

4. On April 30, 1984, the Articles of Incorporation of The Christian Bookshelf Fellowship were amended changing the name of the organization to Christian Life Center. (Appl. Ex. No. 23)

5. On January 1, 1998, the sanctuary building of the applicant was located at 421 N. Fourteenth Street in Herrin, Illinois. Behind this sanctuary building and across the alley from it

was located the Bob Stotlar Lumber Yard, Inc. showroom and two adjacent lumber sheds. (Appl. Ex. Nos. 3 & 4)

6. At a Special Called Congregational Meeting held on February 6, 1998, the members of applicant agreed that a representative of the church should attend the bankruptcy sale scheduled for the next day of the Bob Stotlar Lumber Yard parcels. The representative was to bid up to \$110,000.00 in an attempt purchase those parcels and the improvements thereon. (Appl. Ex. Nos. 11 & 16)

7. At the auction of the Bob Stotlar Lumber Yard parcels held by the trustee in bankruptcy on February 7, 1998, the applicant purchased the three parcels here in issue and the improvements thereon for \$110,000.00. By a trustee's deed dated February 24, 1998, the trustee in bankruptcy conveyed these three parcels to the Applicant. (Dept. Ex. No. 2B & Appl. Ex. No. 12)

8. Immediately after acquiring the parcels here in issue volunteers from the applicant, during their spare time, began to clean up the Bob Stotlar showroom. The applicant received the city code inspector's report during April 1998. It was estimated that it would take \$12,000.00 to bring the Bob Stotlar showroom up to code for use as a youth activity center. On May 6, 1998, the session approved \$7,000.00 for repairs to meet the code. On May 28, 1998, a dumpster was dropped off at the Bob Stotlar property. On June 29, 1998, Marion Glass completed recessing and reversing the front doors of the Bob Stotlar showroom building. (Appl. Ex. No. 12)

9. Work on the electrical upgrade to comply with the code began in July 1998 and was completed about August 5, 1998. On October 7, 1998, the session authorized more funds for toilet and plumbing remodeling for the Bob Stotlar showroom. That work began later in October 1998. (Appl. Ex. Nos. 11 & 12)

10. Roof repair on the Bob Stotlar showroom building was scheduled for February 18, 1999. The adaptation of the Bob Stotlar showroom so that it could be used for the CLC youth ministry was completed by April 7, 1999. (Appl. Ex. No. 11)

11. The applicant held Vacation Bible School on July 6, 1998, through July 10, 1998. The applicant used the Bob Stotlar showroom for craft classes and recreation for the aforesaid Vacation Bible School. (Appl. Ex. 9)

12. Not long after the applicant purchased the Bob Stotlar property that fact came to the attention of the pastor of the CLC. During 1997, CLC had begun actively looking for a place to open a Christian youth center in Herrin. In April 1998 CLC and the applicant entered into a dialogue concerning jointly operating a Christian youth center in Herrin. (Tr. pp. 23-25, Appl. Ex. No. 11)

13. CLC approached the applicant during September or October 1998 with the idea of using the Bob Stotlar showroom for a Christian haunted house on Halloween weekend. The applicant agreed to allow this use. CLC utilized the entire Bob Stotlar showroom for the haunted house including dramatic presentations. A youth was asked for a \$2.00 donation to go through the haunted house. If the youth did not have the \$2.00, the donation was waived. After the youth had been through the haunted house they then went to a counseling area. In the counseling area, counselors were there with refreshments to talk to them about any problems they might have and to encourage them to attend the church of their choice. CLC also offered a \$50.00 cash door prize for youth that wrote down their names and addresses. CLC then proceeded to make follow up calls on the youth that had signed up for the giveaway. (Tr. pp. 27, 28, 34, & 35)

14. On April 29, 1999, the applicant and CLC executed a joint use agreement concerning the showroom building on the Bob Stotlar property. This agreement provided that the applicant would provide the building, building maintenance, three/fourths of the utility costs, and insurance costs. In turn CLC would provide one/fourth of the utility costs and insurance costs, the programming and the personnel to operate the programming. This joint use agreement allowed CLC to use this building on Friday and Saturday evenings for a term of one year from April 1, 1999, through March 31, 2000. (Tr. p. 29, App. Ex. No. 5)

15. CLC has used the Bob Stotlar showroom as a Christian youth center for young adults ages 16 through 23. This use has occurred every Friday and Saturday evening since April 29,

1999. The Bob Stotlar showroom after remodeling contained a pool table area, a stage and music entertainment area, a food service area, a men's restroom, a women's restroom, and several storage areas. (Tr. p. 39, Dept. Ex. 2-O)

16. The Bob Stotlar showroom now known as the Student Union is set up to be used as a drug free, alcohol free, safe place for 16 to 23 year old youth who do not regularly attend church to gather for activities on Friday and Saturday evenings. (Tr. pp. 31-33)

17. Adult volunteers who work in the facility are trained to counsel and evangelize the youth that attend. The musical groups that appear at the Student Union are Christian groups that play Christian music. When there is not a concert going on, Christian music is played in the facility and Christian videos are shown. (Appl. Ex. No. 13)

18. Beginning in August 1999 CLC held "Fifth Quarter" All-You-Can-Eat Pizza Bash outreach programs at the Student Union after each of the high school's home football games. At the first "Fifth Quarter" Pizza Bash the football team and staff were special guests and were admitted free. All others were admitted for a \$2.00 donation that entitled them to an all-you-can-eat pizza buffet and all-you-can-drink soda. If the youth could not pay the \$2.00 donation, it was waived. The speaker at that event was Mark Keisling, former WSIL-TV3 sportscaster who was the new Fellowship of Christian Athletes Regional Director. Mr. Keisling spoke on having a personal relationship with Christ. Additional "Fifth Quarter" pizza bashes were held after the other home football games. (Appl. Ex. No. 29)

19. There is no charge to get into the Student Union unless there is a Christian musical group playing there. If a Christian musical group is playing there, that group is allowed to set the entrance donation. The entrance donation is either \$1.00 or \$2.00. If a youth wishes to attend a concert and does not have the amount for the donation, the donation is waived. The Student Union does not keep these entrance donations but turns them over to the band to pay their expenses. If the amount of the donations is smaller than expected, the Student Union will make a donation to help the band pay its expenses. (Tr. pp. 40-42, Appl. Ex. No. 29)

20. The Student Union had initially intended to charge the youth for playing pool and other games. However that is not what has been done since the Student Union opened. If a youth wants to play pool they put up their driver's license as a deposit and receive the necessary equipment to play. After they are finished playing they return the pool equipment and receive their driver's license back. The same procedure is also used with the other games that are available. (Tr. pp. 42 & 43)

21. The Student Union also operates a food concession in the building in question. There are charges to purchase food. Prices for food are not waived or reduced in cases of need. (Tr. pp. 43 & 44)

22. Since April 29, 1999, the applicant and CLC have used the Student Union to provide an alcohol and substance free environment for Friday and Saturday evening activities for the youth of the City of Herrin. The Student Union was set up to be a place where youth would want to come for activities. The staff of the Student Union impacts the youth with the gospel message of Jesus Christ either overtly through teaching, preaching, and music or covertly through association with the trained volunteer staff of the Student Union. (Tr. pp. 44 & 45)

23. During 1998, the funds to purchase and adapt the Bob Stotlar showroom came from contributions to the First Presbyterian Church. During 1999, the funds to operate the Student Union came from contributions to CLC. (Appl. Ex. Nos. 15 & 29)

24. Concerning the two lumber sheds located on part of Williamson County Parcel Index No. 02-19-453-002 and Parcel Index No. 02-19-453-003, no evidence was offered by the applicant or CLC that the portion of these parcels occupied by the lumber sheds were being adapted for exempt use during 1998.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning exemption of religious organizations from property taxation, 35 **ILCS** 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to an exemption.

The applicant is incorporated pursuant to the Religious Corporation Act of 1872. The Articles of Incorporation of the Christian Bookshelf Fellowship now the CLC most certainly indicate that it is organized for religious purposes. The character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also Rotary International v. Paschen, 14 Ill.2d 480 (1958). I consequently conclude that both the applicant and CLC are religious organizations.

The applicant acquired title to the three parcels here in issue pursuant to a trustee's deed dated February 24, 1998.

The applicant desired to use the parcels here in issue for religious or church purposes. CLC was looking for a place to operate a ministry to youth who did not attend church and who lived in the Herrin area. Soon after CLC became aware that the applicant had purchased these parcels, CLC and applicant entered into a dialogue concerning the possibility of CLC operating a youth ministry in the Bob Stotlar showroom located on these parcels. At the same time the applicant was engaged in bringing the Bob Stotlar showroom up to code so that it could be used by the applicant or others for ministry purposes. The adaptation of the Bob Stotlar showroom began immediately after the applicant acquired the property in February 1998 and was completed on April 7, 1999. Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

I therefore conclude that during the period February 24, 1998, through April 7, 1999, the applicant was in the process of adapting the Bob Stotlar showroom located on Williamson County Parcel No. 02-19-453-001 and a portion of Williamson County Parcel No. 02-19-453-002 for religious and charitable purposes. In addition it should be pointed out that during the week of July 6, 1998, through July 10, 1998, the applicant used the Bob Stotlar showroom for

craft classes and recreation during its Vacation Bible School. CLC also used the Bob Stotlar showroom for a Christian haunted house over Halloween weekend during 1998.

With regard to the Joint Use Agreement between the applicant and CLC concerning the use of the Bob Stotlar showroom, the applicant is providing the showroom, which has been adapted for use as a Christian gathering place, for the youth of Herrin. The applicant has agreed for the term of the Joint Use Agreement to maintain the building and to pay three/fourths of the utilities and insurance. CLC pursuant to the agreement is to provide the programming and personnel to operate the Student Union as well as one/fourth of the utilities and insurance to operate the building. It has been determined that both the applicant and the CLC are religious organizations.

There also is a question of whether the use of the Student Union by the CLC is a charitable use. The CLC provides a supervised alcohol and substance free safe environment for young adults ages 16 through 23 in the City of Herrin on Friday and Saturday evening. In the case of Crerar v. Williams, 145 Ill. 625 (1893) the Illinois Supreme Court defined the term charitable use as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burthens of government. (Id. at 643)

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization and a use are charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in

the way of those seeking the benefits; and (6) the property is used for primarily charitable purposes. Since CLC waives or reduces the admission charge on special occasions in cases of need and does not charge persons who want to play any of the games in the Student Union, I conclude that the benefits derived are for an indefinite number of persons, charity is dispensed to all who need and apply for it, and no obstacles are placed in the way of those seeking the benefits. Since CLC is organized under the General Not For Profit Corporation Act, I conclude that CLC has no capital, capital stock, or shareholders, and does not profit from the enterprise. During 1999, the funds to operate the Student Union, I conclude were derived mainly from contributions to CLC and were held in trust for the objects and purposes expressed in its charter. Finally in view of the fact that CLC since April 29, 1999, has used the Student Union to provide an alcohol and substance free safe environment for Herrin youth on Friday and Saturday evenings, I conclude that CLC used the Student Union for charitable purposes after April 29, 1999, through March 30, 2000.

While CLC operates a food concession stand in the Student Union and does not waive or reduce fees at that stand, the operation of the food concession I conclude, is incidental to the primary purpose of the Student Union, which is to provide an alcohol and substance free safe environment in a Christian setting for the youth of Herrin. I therefore conclude that the entire Student Union building and the land on which it stands qualify for exemption. See Highland Park Women's Club v. Department of Revenue, 206 Ill.App.3d 447 (2nd Dist. 1991) and Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988).

The Joint Use Agreement between the applicant and CLC provides a method for sharing the expenses for the setup and operation of the Student Union between two organizations which are both primarily religious organizations and which intend to use the Student Union during the term of the agreement for religious and charitable purposes. Therefore I conclude that the Joint Use Agreement does not constitute a lease for profit. See Childrens Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972)

Regarding the use of the rest of Williamson County Parcel No. 02-19-453-002 and all of Parcel Index No. 02-19-453-003, in the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used did not qualify for the statutory exemption as property used exclusively for exempt purposes regardless of the owner's intent. In the situation where an identifiable portion of a property was used for an exempt purpose while the remainder was used primarily for a nonexempt purpose or not at all, the Courts have held that the portion used for exempt purposes qualified for exemption, and the remainder did not qualify. City of Mattoon v. Graham, 386 Ill. 180 (1944). In view of the fact that no evidence was offered by the applicant or CLC that the two lumber sheds located on part of Williamson County Parcel Index No. 02-19-453-002 and Parcel Index No. 02-19-453-003 were being adapted for exempt use during 1998, I conclude that portion of said parcels and the lumber sheds thereon did not qualify for exemption during 1998.

I therefore recommend that Williamson County Parcel Index No. 02-19-453-001 and the portion of Williamson County Parcel Index No. 02-19-453-002 on which the Bob Stotlar showroom is located and also said showroom be exempt from real estate taxation for 85% of the 1998-assessment year.

I further recommend that the remainder of Williamson County Parcel Index No. 02-19-453-002 and Parcel Index No. 02-19-453-003 and the lumber sheds located thereon remain on the tax rolls for the 1998-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
February 1, 2001